JD–96–03
Luykens, PA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

LIBRO SHIRT MFG. CO., PARK SHIRT COMPANY, INC., AND LEVENTHAL LTD., A SINGLE EMPLOYER

and Case No. 6–CA–33171

UNITE MID-ATLANTIC REGIONAL JOINT BOARD

David L. Shepley, Esq., for the General Counsel.

Angela Pace, Esq. (*Kennedy, Schwartz & Cure, PC*), of New York, NY, for the Charging Party.

Bernard Ferster, Esq., of New Rochelle, NY, and *Sidney Orenstein, Esq.*, of Larchmont, NY, for Respondents.

DECISION

Findings of Fact and Conclusions of Law

Benjamin Schlesinger, Administrative Law Judge. The principal allegation in this unfair labor practice proceeding is that Libro Shirt Mfg. Co. ("Libro") and Leventhal Ltd. ("Leventhal"), who are admitted to be a single employer, closed Libro's union business in Pennsylvania and moved its business to nonunion Park Shirt Company, Inc. ("Park"), in Tennessee, which is alleged to be a single employer with the other two, in violation of Section 8(a)(5) and (1) of the Act. Respondents denied that they violated the Act in any manner.[1]

Leventhal, a New York corporation, with an office and place of business in Manhasset, New York, is engaged in the non-retail sale and distribution of shirts and pants for state police and postal employees, for which it takes orders, prepares markers (patterns), orders piece goods and trim, and sends out its work to be performed by contractors. All of the shirts were manufactured by Libro, a Pennsylvania corporation, with an office and place of business in Lykens, Pennsylvania. As further discussed below, Leventhal has in the past also sent work to be manufactured by Park, a corporation with an office and place of business in Jamestown, Tennessee, which is engaged in the manufacture and non-retail sale of military shirts and security guard shirts and pants. During the year 2002, Libro sold and shipped from its Lykens facility goods valued in excess of $50,000 directly to points outside Pennsylvania; Park sold and shipped from its Jamestown facility goods valued in excess of $50,000 directly to points outside

[1] This case was tried in Harrisburg, Pennsylvania, on June 24–25 and July 8, 2003. The charge was filed by Unite Mid-Atlantic Regional Joint Board on January 10, 2003, and amended on February 27 and March 31, 2003; and the complaint was issued on April 30, 2003.

Tennessee; and Leventhal performed services valued in excess of $50,000 within New York for Libro and Park, both of which are enterprises engaged in interstate commerce. I conclude that Libro, Leventhal, and Park are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. I also conclude that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

Leventhal and Libro and the Union and its predecessor have had collective-bargaining agreements for many years. The appropriate unit covered by the last agreement is:

> All the employees working at Libro Shirt Mfg. Co., Lykens, Pennsylvania; excluding all executive, administrative, supervisory, clerical, maintenance and janitorial employees and guards.

That agreement was for a term beginning September 1, 1999, and ending August 31, 2002, and contained the following provision.

OTHER FACTORIES AND CONTRACTORS

> A. During the term of this Agreement, the Employer agrees that it shall not, without the consent of the Union, which consent shall not be withheld unreasonably, remove or cause to be removed its present plant or plants in which the Employees work from the city or cities in which such plant or plants are located.
>
> B. During the term of this Agreement, the Employer shall not, without the consent of the Union, manufacture garments or cause them to be manufactured in a factory or factories other than his present factory or factories.
>
> C. During the term of this Agreement the Employer agrees that he shall send work only to such Union registered contractors or manufacturers designated by registration agreement of the parties herein. The Employer agrees simultaneously with the execution of this Agreement to execute such a registration statement, the terms and conditions of which are specifically incorporated herein by reference. The Arbitrator is expressly empowered to determine in accordance with the arbitration procedure provided in this Agreement any disputes which may arise under this Article.

On March 26, 2002, the Union filed a grievance, signed by, among others, Faye Shutt, its President, alleging that Libro violated this Article by sending work for manufacture to Park, resulting in the layoffs of employees. The arbitrator, in an award dated January 17, 2003, found that Libro had been given consent to send work to Park in November 2000 by Bruce Dutton, then International Vice President and Regional Director of Unite. However, with the filing of Libro's answer to the Union's grievance, on May 14, 2002, the consent had been withdrawn, because Libro was fully aware of the Union's contention that work had been lost, whereas the underlying reason that consent had originally been given was that Libro could not handle all its work and had to parcel it out. The arbitrator thus found a violation and ordered that the affected employees be made whole from May 14 to the expiration date of the 1999–2002 agreement.

That award, of course, issued in 2003, but the parties' earlier bargaining for a new collective-bargaining agreement revolved in good part around the issues raised in that arbitration. First, however, Springer and Harold Bock, who replaced Dutton, had brief informal discussions about wages and fringe benefits contributions as early as August 2002. Bock

proposed no wage package in the first year, putting his emphasis on an increase of health insurance contributions, because the fund had absorbed inordinate increases. Springer insisted that there be a wage increase the first year. The parties reached a tentative agreement to increase wages and contributions to the health fund. But those discussions did not result in a complete agreement by the contract's expiration date, however; and the parties voluntarily extended the agreement's expiration date by one month, to September 30.

The first formal negotiations occurred on October 1, the day after the extension agreement had expired. Springer expressed his unhappiness that the Union had filed the grievance. He wanted it dropped. He did not want to see the Union go through with it, insisting that the Union would be "committing suicide" if it did. He predicted that Libro would lose the arbitration, because the arbitrator was hand-picked by the Union; and, if Libro lost that arbitration, he would probably have to close the Libro plant. Bock responded that the grievance was not a subject of negotiation, that the arbitration had been scheduled, and that it would just move forward as planned. The complaint alleges Springer's statements about the Union's continuing to process the grievance violated Section 8(a)(1) of the Act, because he threatened plant closure and unspecified adverse consequences ("suicide") for engaging in activities protected by the Act and sought to coerce the employees from engaging in that concerted activity. I agree. *George W. Kugler, Inc.*, 258 NLRB 122, 124 (1981).

Whether Springer made a counterproposal on October 1 is unclear, but his letter the following day "repeat[ed Libro's] last position," proposing a three-year agreement, with wage increases of 10 cents per hour on September 1, 2002; 15 cents on September 1, 2003; and 25 cents on September 1, 2004. He offered to continue and increase his contributions to the Amalgamated Cotton Garment Insurance Fund and continue at the current rate his contributions to the employees' current Section 401(k) and Textile Retirement plans. Finally, he insisted that the "pending submission to arbitration concerning making goods in another factory or by contractors shall be withdrawn and not refiled" and that "[a]ll Contract clauses concerning restriction on the making of goods in another factory or by contractors shall be eliminated." By letter dated October 4, however, Libro "withdr[ew] any request with respect to the pending arbitration." The unfair labor practice, found above, was not rendered moot, as Respondents contend, because the unfair labor practice was never fully remedied and was followed by other proscribed conduct. *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978).

The parties met again on October 10, when Springer proposed that Libro would be able to manufacture at Park for the life of the contract shirts that had been previously been manufactured there. Libro guaranteed that it would produce a minimum of 350 dozen uniform shirts per week, as long as Libro could produce that or more. Finally, if Libro did not give its employees the minimum, it would finish Libro's work that was being manufactured by Park; and Park would not manufacture anything, except military work and pants, for four weeks, until Libro's production was back up to 350 dozen per week. The Union felt that the 350 dozen was insufficient to keep the Libro plant working full time because there was hard and easy work manufactured in the plant; and if the employees were working on only easy jobs, "they would work their sel[ves] out of a job with 350 dozen." The Union thus proposed or, if not formally proposed, mentioned a guaranteed full-time work week for the current employees.

The next meeting was scheduled for October 14, but there was a mix-up, and Springer was at the Leventhal plant, and Bock was not. So Springer called the four employee members of the Union negotiating committee into his office and told them that "he really needed Tennessee. He had to be able to have work done in Tennessee or he'd just close Lykens." The employees replied that they needed work. The parties next met on November 4 and discussed at length Springer's 350-dozen-shirt proposal. The employees discussed in front of Springer

what level of production might ensure that they would have a full workweek, and they agreed that there had to be a guarantee of at least 500 dozen, rather than the 350 figure that Springer had proposed, so that all the current employees would have full weeks of employment. The Union, however, did not make a formal proposal, and Springer made no formal reply to the employees' discussion.

During this negotiating session, at no time did the Union insist that it wanted to maintain its prior no-contracting clause. On the other hand, the Union did not state specifically that it was willing to do away with this clause. Springer should have known what the Union's intent was, because he raised the issue of his not having the ability to compete with some of his competitors. Specifically, he had heard that the Union was negotiating with Fetcheimer and asked about what kind of deal it got. Bock then offered Springer the same deal as he gave Fetcheimer, which was more money, a 25 cents per hour yearly increase, than Springer had previously agreed to, but would have permitted the company to outsource, providing certain guarantees of employment were given.

On the same day, November 4, apparently after that session, Springer wrote to the Union:

> The contract has terminated, we have not reached an agreement and it is apparent that we are at "impasse." It is therefore timely and appropriate for us to state the rules under which we will operate, effective as of today, at the same time setting forth an offer for your acceptance.

What followed was a slight variation of Springer's offer of October 2, as amended by the withdrawal of his insistence that the subcontracting grievance be withdrawn. His offer of a percentage to the Insurance Fund was modified by providing that contributions would be based on earnings not including "bonus" payments. Otherwise, he wanted to continue to work with Park, with his guarantee of 350 dozen units to Libro. Springer did not implement this offer, despite the clear language of his letter that his offer constituted the "rules under which [he] will operate, effective as of today"; and the complaint does not allege that this constituted a premature declaration of impasse, although it undoubtedly was, and unlawful implementation of Springer's latest offer.

But the complaint does allege that this constituted a false declaration of an impasse and a false statement that the new terms were going to be implemented. The General Counsel relies on *Horsehead Resource Development Co.*, 321 NLRB 1404, 1404 (1996), enf. Denied in relevant part 154 F.3d 328 (6th Cir. 1998); and *South Carolina Baptist Ministries*, 310 NLRB 156, 157 (1993), for the proposition that a false declaration of impasse may be a violation of the Act. That is not accurate. The Board held only that such conduct undermined the negotiating process but never held that such a declaration, by itself, violated Section 8(a)(5). On the other hand, Springer, by falsely stating that he was implementing the rules under which he would henceforth operate, without justifying at all his failure to do so—indeed, there was no impasse that day, with Springer's new offer that had just been announced and never been discussed—evinced his contempt for the bargaining process by threatening immediate implementation of a proposal he had just made. I conclude that Leventhal and Libro violated Section 8(a)(5).

Bock responded on November 7, claiming his surprise at receiving the letter "imply[ing]" that the parties were at impasse, "when this is the first time the proposals in this letter have been made," an accusation which was not wholly accurate, because, with one exception, the proposals were not new. Then, Bock accused Springer of changing positions, because he had earlier promised to set another date to continue the negotiations; and Bock asked Springer to

arrange for a meeting. Springer replied on November 11, accusing Bock of having committed several errors. Specifically, he claimed that the parties were at impasse:

> All economic issues have been agreed to, subject to a total agreement. From the very first you have adamantly refused to move an iota on the sole remaining issue, the Company's needed freedom to produce garments elsewhere. The Company has repeatedly modified its position on this essential matter, hoping that it could reach a point on which your Union would agree. Again, you have not moved at all. You even refused or neglected to attend our last meeting at which we put forward a bare bones position. You have responded only in silence; even though you have had that proposal in hand since October 10th. The last Collective Agreement has expired, we both have negotiated to the point that neither you nor we are obviously willing to go further on the one open issue. That is the very definition of "impasse".

Springer also claimed that he had not changed his mind about again meeting with Bock and invited him to call to set up a meeting. Finally, noting that he would like the stability of a new collective-bargaining agreement, Springer cautioned that his offer on November 4 was open only to December 20; and, if the Union did not accept it, "we may withdraw the same or, at our discretion, modify the same."

On November 14, the arbitration hearing on the Union's outsourcing grievance was held. Shutt, the only employee witness, testified that work was being transferred to Park, while the Libro employees had two layoffs and had 21 weeks when they worked only four days a week. The day after, Springer telephoned Shutt at the plant. Loudly and angrily, he asked if the Union wanted him to close the plant. He said that the Union worked for the employees. If they had a bad attorney or doctor, they would get a new one. He might negotiate a contract with the 30 employees who went to the arbitration the day before because they cared about their jobs. He said that he had made an offer of a contract and that contract would be open until December 20. He ended by saying that he needed Tennessee, and that was the bottom line or he would just close Libro. A few days later, Springer called Shutt again and said that, if the employees had an in-house union, they would have already had a raise and they would be saving on Union dues. He ended: "Faye, I really need Tennessee, I need Tennessee or I'll close. . . . [I]f need be, I'll unionize Tennessee and I'll shut Libro." These two conversations are alleged as unlawful, the first because Springer threatened to bypass the Union by bargaining directly with the employees who had attended the arbitration hearing the day before, which would undermine the integrity of the collective-bargaining representative, in violation of Section 8(a)(1) of the Act. I so conclude. The first also includes a threat to close Libro, as does the second. These will be discussed, below.

On December 13, the parties held their last negotiating session. Bock tried to persuade Springer to increase his guarantee of production and to give some guarantee of hours. Springer responded that he could not do so without talking to the "powers that be." When faced with Bock's request to telephone the "powers," Springer admitted that he had the authority and added, "[H]ere's what I'm going to do." He took his letter of November 4, crossed out the wage figures, and penciled in, instead of increases of 10, 15 and 25 cents, increases of 5, 15, and 15. He added: "[T]here also will be co-pay on the insurance." Bock asked Springer whether he was sure that he wanted to make that proposal, Springer assured him that he did, and Bock said that he would take the proposal to the employees for a vote.

After the December 13 session concluded, Bock sent Springer a letter in which he summarily rejected Springer's new offer and countered with proposals to increase wages 25

cents in each year of the contract (an offer which was higher than Bock's previous offers) and to have no co-pay on insurance. Bock wanted to "continue to talk on your outsourcing proposal". Springer replied on December 16:

> I have your Fax of December 13, 2002, in which you inform us that our offer of November 4, 2002, is rejected, as well as the package we discussed at the meeting of December 13, 2002, as a possible new offer. As our letter of November 4, 2002 said, we are clearly at an impasse. Once again you have abjectly refused to move on the issue of outsourcing, a matter of vital interest to us. You have never offered anything but "talks."
>
> Since you have rejected terms of the November 4, 2002 letter, even before December 20, 2002, and every other offer we have made, we will withdraw all proposals. We have no alternative but to inform you that we will soon announce the terms and conditions of employment to replace the provisions of the now terminated Collective Agreement.
>
> As we did on December 13, we are always willing to extend the courtesy of meeting with you at your request. But, do not make the mistake of failing to recognize that you have rejected our last offer, as well as all prior offers. We have no further offers to make. Let us know if you wish to meet, and please propose alternate dates.

On December 17, Bock replied to Springer, indicating that the Union was prepared to negotiate the outsourcing provision, but "you have not moved off of your initial proposal since day one - it's either your way or the highway. . . . We believe that we should continue to negotiate this issue and sit down and really get into some meaningful proposals." By letter dated December 18, Springer denied that he had not made movement. Rather, "We have proposed progressive modifications in our position until we would move no more, and were forced to accept the fact of an impasse, Your position 'since day one' was, and still is, 'no.'" Bock wrote that he referred only to Springer's failure to make more than one outsourcing proposal. In his reply of December 20, Springer did not deny that, repeating only that the parties were at an impasse and he had no reason to modify his previous proposals. He ended: "We will continue to review our alternatives and will announce our decisions when we are prepared to do so."

On December 23, Springer wrote and Libro distributed the following letter to its employees:

> We regret that at this Holiday Season all the news can not be good, but it has been a most difficult and stressful year. Both the business economy and the negotiation of a new collective bargaining agreement has been painful.
>
> As you know we have been unsuccessful in negotiating a new Collective Agreement with your Union. The old Agreement has terminated and negotiations are at impasse, or dead lock.
>
> Therefore, since the old Agreement no longer applies, we must tell you what conditions will apply to your employment upon the reopening of the factory after the Winter Vacation.
>
> Wages: We will maintain the present schedule of wage rates.

IN ADDITION, Effective on the first day of employment in 2003, we will add five cents per hour to wages. Subsequent wage increases will be at our discretion.

Holidays and Vacations: We will maintain the present schedule of eligibility and pay with respect to holidays and the first two weeks of summer vacation. If we decide to continue granting additional vacation benefits we will tell you at the proper time.

Insurance: If the Trustees allow, we will continue to contribute to the present insurance plan to the extent of 50%. You will be responsible to pay the remaining 50%. If the Trustees do not approve, we will be forced to terminate all contributions, and you will be able to exercise your C.O.B.R.A. rights.

Retirement plan: We will, if the Trustees allow, consolidate all retirement contributions on your behalf, for all plans currently supported and contribute all monies only to the Union sponsored 401K plan. If they do not approve, we will be forced to terminate all contributions to the Union Funds and attempt to replace it with a equivalent Libro 401K plan.

Grievances: In the absence of the old grievance procedure, we still invite any employee with a grievance to report any and all problems to the employees' immediate supervisor. If the problem is not satisfactorily adjusted at that time, it may be referred to the Manager for final disposition. You should contact the Union if you need or wish their assistance in any grievance.

Layoff: Layoffs and recall after recall [sic] will be by Management's discretion, although we will, at our discretion, respect seniority if possible.

Dues check off: Since we are without a collective agreement, we request that you make your individual arrangements with respect to payment of Union dues.

The above terms are tentative, subject to change at any time.

Strangely, the one change about which it was at least arguable that the parties were at impasse, the subcontracting clause, was omitted from this letter.

By letter dated January 3, 2003, Bock once again denied that impasse existed and asked that negotiations resume, including negotiations on the outsourcing issue. Springer never replied. Springer applied the terms of its December 23 letter when the Libro employees returned from the holiday shutdown on January 6, 2003, at least immediately to the effect of paying then a 5 cent per hour increase.

At lunch break on January 7, Union Business Agent David Greenlief held a meeting with the employees to discuss the implications of Springer's December 23 letter. The employees were "highly upset" and "totally outraged" that Springer would do what he was saying he was going to do to them. They could not afford to work if they had to co-pay their insurance. The grievance procedure was going to be gone probably; the vacations was up for grabs. The employees insisted that they wanted to take a strike vote because they could not work under the conditions that he had imposed on them. They were unanimous that they wanted to "protest the unfair labor practice" and they were not going to return to work at the end of lunch break. The

workers went to a shopping center across the street; got poster paper, marking pens, and string; and made picket signs, stating "on strike for unfair labor practices" and "unfair."

By letter dated January 16, 2003, Springer announced to the Union and its employees in the form of a notice under the Worker Adjustment and Retraining Notification Act ("WARN") that the Libro plant would be closing in 60 days. There was no prior notice given to the Union about the decision to close the plant, and the Union was not afforded the opportunity to bargain over the closing or its effects. In the weeks that followed the closing announcement, Springer removed all partially finished goods and finished goods from the Libro plant by having Park send trailer trucks from Tennessee to the Libro plant, loading the goods on the trucks, and taking them to the Park plant. With the Libro plant shut down after January 7, Leventhal began to place its orders on a daily basis with Park for production at the Park plant. All the orders for custom garments of more intricate construction and design, previously manufactured at Libro, were, at the time of the hearing, being placed with Park, whose employees were learning how to do that work. On February 27, Thomas Kennedy, attorney for the Union, wrote Libro counsel requesting that Libro bargain with the Union over the decision to close its plant. A few days later, on March 3, the parties met briefly with a state mediator, but no substantive negotiations regarding the plant closing occurred. Springer did not offer any future negotiations with the Union over the decision to close the plant.

The strike ended with the Union's letter of March 13, advising Springer that the strike would end effective March 14. On March 13, Springer responded that he understood the Union's announcement that it was ending its strike to be an unconditional offer to return to work, and he accepted it as such. However, he wrote that it was not feasible to accept the striking employees back to work because of the malfunctioning of a machine to make markers and his inability to fix it. The Libro plant closed on March 17 and remains closed. The production equipment remains at the plant, and the property has not been sold.

Among the unfair labor practices alleged in the complaint, the one that is most readily apparent is that Springer's December 23 letter imposed terms and conditions of employment which had never been part of Libro's earlier offer. Skipping his regressive bargaining at the December 13 session for a moment, the letter totally revised the grievance procedure and eliminated any participation by the Union, not just arbitration of disputes that arose after the earlier collective-bargaining agreement had expired, as Leventhal and Libro accurately contend that they had the legal right to do. *Litton Financial Printing Div. v. NLRB*, 501 U.S. 190 (1991). It proposed not only an employee co-pay on insurance, but also the employees' total assumption of the cost of health insurance, should the trustees of the health plan decline to accept Springer's proposal. It proposed a new retirement plan, should the Union-plan trustees not approve what Springer proposed. It proposed a new layoff and recall policy not based solely on seniority. It announced that it would continue to grant two weeks' vacation to those who were entitled to it, but would withhold judgment on whether it would continue to grant a third week's vacation to those who had been entitled to it in the past. Not one of these changes was ever discussed at the bargaining table. Even worse, Springer reserved unto himself the right to change all his newly announced wages and terms and conditions of employment at his pleasure.

Finally, Springer announced the five-cent raise, which Libro gave on January 6, 2003, but further left open to its own discretion any subsequent wage increase. At least, that raise had been proposed on December 13. However, by December 23, the date of Springer's letter, he had specifically withdrawn all his proposals. His December 16 letter so stated, accompanying his withdrawal with his notification that he would soon announce the terms and conditions of

employment which he would unilaterally impose to replace the provisions of the expired agreement. As a result, every change that Libro announced was different from its last offer.

In *Taft Broadcasting Co.*, 163 NLRB 475, 478 (1967), enfd. sub nom. *Television Artists AFTRA v. NLRB*, 395 F.2d 622 (D.C. Cir. 1968), the Board stated:

> An employer violates his duty to bargain if, when negotiations are sought or are in progress, he unilaterally institutes changes in existing terms and conditions of employment. On the other hand, after bargaining to an impasse, that is, after good-faith negotiations have exhausted the prospects of concluding an agreement, an employer does not violate the Act by making unilateral changes that are reasonably comprehended within his pre-impasse proposals.

But, even after an impasse is reached, an employer may not make changes that were not encompassed within its last offer, indeed never even been mentioned, because that is "necessarily inconsistent with a sincere desire to conclude an agreement with the union." *NLRB v. Katz*, 369 U.S. 736, 745 (1962); *United Contractors, Inc.*, 244 NLRB 72, 73 (1979), enfd. mem. 631 F.2d 735 (7th Cir. 1980).

It is obvious that Leventhal and Libro had reached no agreement with the Union. Thus, all the changes which Springer announced on December 23 were unilaterally made, and, as to those which he had never discussed with the Union, without prior notice to or bargaining with it. All these changes affected the employees' wages and terms and conditions of employment, and it is axiomatic that these unilateral changes violated Section 8(a)(5) and (1) of the Act. Leventhal and Libro, as did the employer in *Caravelle Boat Co.*, 227 NLRB 1355 (1977), defend their actions by asserting that the parties bargained to impasse, thus freeing the companies to make any unilateral changes. But that rule applies, at best, when the parties, having reached an impasse, have actually bargained about the changes which are unilaterally instituted. Board law clearly establishes that the unilateral changes must be consistent with the terms of the rejected offer. *Caravelle Boat Co.*, above at 1358; *Royal Himmel Distilling Co.*, 203 NLRB 370, 370 fn. 3 (1973). Here, obviously, they were not, especially because Springer had withdrawn his prior proposal in its entirety.

Leventhal and Libro seem to suggest that Springer's December 23 letter did not set forth any new terms and conditions of their employees' employment, because many of the provisions he proposed were not effective as of January 6, 2003. I reject that contention. Merely because vacations were to be given in the summer did not mean that the two weeks' vacation was not a term of employment as of January 6. Merely because certain terms were conditional did not mean that, as of January 6, those were the current terms, subject to Springer's change of mind. Merely because Libro changed its position and paid its full insurance on its employees at a date later than January 6 did not mean that its employees were not to contribute to the cost of their own health insurance.

Finally, Leventhal and Libro contend that the Union had a copy of the December 23 letter two weeks before any of the proposed changes were to take effect and "did not choose to negotiate any of the matters." A similar defense of a waiver was rejected in *Caravelle Boat Co.*, above at 1358. Here, the Union never had notice of Springer's changes, even though his letter indicates that the Union was sent a copy. Bock was advised of it by one of the employees, a member of the bargaining committee; and he wrote Springer on January 3, 2003, denying that there was an impasse and asking for continued negotiations. Greenlief never received it, and he was instructed by Bock to get a copy from the employees when they returned in January from the plant Christmas shutdown. Then, he immediately attempted to obtain a copy of the letter

and set up a meeting with the employees, which he did. They went on strike to protest the changes. The unfair labor practice charges were filed three days later, on January 10. I thus find that there was no delay and, therefore, no waiver of bargaining rights, which the Board has repeatedly held "will not be lightly inferred and must be clearly and unequivocally conveyed." Id. at 1358. The Union's actions did "not constitute a clear and unequivocal manifestation of [its] intention to waive its right to complain about such action." Ibid.

The employees' strike was prompted solely by Springer's letter, which, as found, violated the Act. As a result, the Union's strike was an unfair labor practice strike. Although the Union's letter ending its strike was less than precise in advising Libro that the employees were unconditionally offering to return to work, Springer wrote that he understood that that was exactly what the Union was proposing. He, nonetheless, refused to reinstate the employees, insisting that a machine was broken, a fact never proved at the hearing, and, even if proved, never proved that it could not be fixed expeditiously; and then he closed the plant and transferred its work to Park. There was, therefore, no credible reason for Springer's failure to reinstate the unfair labor practice strikers on March 14, 2003.

There is one other conclusion to be drawn from Springer's December 23 letter: he never had any intention as of that date to close Libro. All the terms that he was putting in effect were couched in terms not only in the present but in the future. For example, in advising the employees of their new vacation benefit, he maintained that he would continue to grant the two-week vacation in the summer, but he maintained that he had the discretion to grant any other increases. He granted a five-cent increase on the day the employees were to return to work, but he had the discretion to grant any other increases. The other provisions, including his application to the trustees of the health and pension plans for approval of his plans, all contemplated that Libro would remain in business. Springer testified, however, as follows:

> Going back toward October, November, December, Libro operates – it's a custom shop and operates on contracts that come from different municipalities. It's a major part of their business. Well, what happened was when 9/11 came, everything started to dry up. We had large contracts with different agencies. They say that they would buy x amount up to, not a guarantee, but basically that's usually what happens with them. These agencies dried up. There was no money. Pennsylvania State is a perfect example. There was no money in the state. New York is another problem. And we had this all over the country, so all of a sudden our business started to dry up, and we realized this looking at it, we realized that we could operate Libro on a smaller scale that was after 9/11. But it got to the point where the scale that we were going to operate them on was just losing money and money and money. It wasn't working, which I assume[d] was happening not realizing how bad it was. When the accountant [Robert Norman] came in in December I sat with him. I said, you know, Bob, what is the story here. I mean we're looking at a serious situation. He says, well, let me go over the numbers. Let me see – give you an approximate figure what's happening to you, and he gave us some sort of number, and he says that's not until I actually figure it out approximately. And a loss for that year, just the year 2002 was $300,000, and he said you will have a much larger loss going forward into the first quarter. So there's no way that we can sustain these losses. We'll go broke. It's better that we close it than keep on going like this and keep on bleeding. I spoke to my investors. I told them what the situation is. I said they would probably have to put more money in the company, and they said there's no way they're going to put more money in. Better close it. After that, I went to counsel. I asked him, what do we do in this situation? He said to me, well, you send out a WARN notice . . . .

Springer's explanation makes little sense. Libro's business "started to dry up" after the tragedy of September 11, 2001, and Springer recognized that he was having problems, according to his own testimony, as early as October 2002. Despite being in this critical financial distress, Springer made no mention of it to the Union, keeping his existing tentative agreement of a wage increase on the table until December 13. Even then, he did not claim financial distress. Furthermore, he did not send the WARN notice immediately. Without explanation, he waited until almost three weeks later (he testified that he met with his accountant between Christmas and New Year's), only after the strike had commenced, to send the WARN notice.

Finally, Respondents offered not a single document to prove that any of Springer's testimony was true: not a financial statement of any of Respondents, not an accounting document showing that any had lost work or had not been profitable. The record does not even demonstrate which of the entities lost money, particularly in light of the fact that they are so interrelated, as discussed below. In addition, Springer's testimony was utterly unsupported by not only documents, but also witnesses. The accountant, Norman, did not testify, nor did any of the investors (or Bates or Norman) whom he allegedly consulted to get their approval. (Why Springer would even consult with Norman, who allegedly advised Springer of Libro's dire distress, was not explained, except for Springer's unbelievable attempt to recant his testimony that he spoke with both Bates and Norman.)

In sum, the defense of Leventhal and Libro narrows to a determination of Springer's believability. On that, he had major problems: he was evasive, he was self-contradictory, he was antagonistic, he was unresponsive, and he was insincere—which are the reasons that that I have not credited certain of his denials in my recitation of the facts above. When asked what kind of documents reflected the prices that Leventhal would pay to Park for their services, he replied: "English." He was asked about the names of Park's customers, to which he answered: "Confidential." Later, when an objection to his refusal to answer was overruled, he responded that he did not know. When asked about the discrepancy, that he was insisting that the information that he did not know was confidential, he replied that he was not sure of the question, which, in fact, was perfectly clear. Indeed, when Respondents' counsel offered to have Springer answer the original question, albeit under the protection of confidentiality, Springer showed that he did know the names of some customers. (That he did not know more of the customers' names, I find, was false, especially because he was Park's chief operating officer, in contradiction to his earlier testimony that Bates held that position.) He elaborated on the method of determining the prices paid by Leventhal to Park as arm's length negotiations between himself, as the chief operating officer of Park, with the general manager of Park, his subordinate. One would offer a price, then the other would counter with another price, and, through continuing that process, they would arrive at a price. That was outright hokum. Indeed, counsel for both the General Counsel and the Union raised substantial questions whether documents, such as invoices, from Park to Leventhal, actually existed, or whether Leventhal ever paid anything to Park for the work which Park did for Leventhal; yet Respondents, albeit not required by any subpoena to produce specific invoices or checks, produced nothing.

That Springer's testimony about his reason for closing Libro is false is also shown by his reliance on a completely different reason for the closure. He told Charlotte Zerby, Libro's downstairs stitching department supervisor, on January 17 that the reason was that he could not come to terms with the Union; he had tried. It is also true that on various occasions during the negotiations, Springer had threatened that, if he were unsuccessful in being permitted to work with Park as he wanted, he would shut Libro. On the other hand, Springer seems to have a quick temper and made some hasty decisions, such as his regressive proposal on December 13. I find that he did not intend to carry out those threats to close Libro, certainly not at the time that he forwarded his new terms and conditions of employment on December 23.

Because I have discredited his testimony about his conversation with his accountant and his reasons for the closure, I find that he had made no decision by the time that the employees returned from their Christmas and New Year's layoff. What changed his mind was that the employees struck on January 7, 2003. Only after that event was the January 16 WARN notice mailed to the Libro employees. Of course, that the strike happened at all was due to Springer's premature, unilateral imposition of new wages and terms and conditions of employment, as held above; and the employees were engaged in protected and concerted activities by protesting his actions and engaging in that strike. Accordingly, his closing the plant violated Section 8(a)(1) of the Act by discriminating against the employees, in essence firing them, for engaging in protected and union activities. That conclusion is consistent with well-settled law that, when the asserted reason for an action fails to withstand scrutiny, the Board may infer that there is another reason—an unlawful one which the employer seeks to conceal—for the discipline. *Shattuck Denn Mining Corp.*, 362 F.2d 466, 470 (9th Cir. 1966); *Painting Co.*, 330 NLRB 1000, 1001 fn. 8 (2000).

The closing and transfer of work also violated Section 8(a)(3), *Garwin Corp.*, 153 NLRB 664 (1965), enfd. in relevant part 374 F.2d. 255 (DC Cir. 1967), cert. denied 387 US 942 (1967); motivated as it was by Springer's animus against the Union for grieving his subcontracting to Park and for refusing to give in to his proposal to permit subcontracting. Springer was also angry at the Union's International's attempt at a meeting in New York City in March 2002 to organize Park's employees "from the top," that is, to get Springer to sign an agreement without the employees' participation, despite the fact that the International had earlier been unsuccessful in organizing Park's employees. There is sufficient here to conclude that the General Counsel has made a prima facie case of Section 8(a)(3) discrimination under *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). Board law holds that, even if Springer closed Libro for reasons that violate the Act, if Springer showed that he would have taken the same action even in the absence of union activities, Leventhal and Libro would escape liability. *Naomi Knitting Plant*, 328 NLRB 1279, 1281 (1999); *Manno Electric*, 321 NLRB 278, 280 fn. 12 (1996). However, Springer offered no credible different reason for the closure.

The above conclusion of law that Leventhal and Libro violated Section 8(a)(5) by imposing new wages and terms and conditions of employment is based on the assumption that Leventhal and Libro and the Union were at impasse. In fact, they were not. The Board wrote in *Taft Broadcasting Co.*, 163 NLRB at 478, as follows:

> Whether a bargaining impasse exists is a matter of judgment. The bargaining history, the good faith of the parties in negotiations, the length of the negotiations, the importance of the issue or issues as to which there is disagreement, the contemporaneous understanding of the parties as to the state of negotiations are all relevant factors to be considered in deciding whether an impasse in bargaining existed.

The bargaining history was admittedly brief, but there was ample time to reach an agreement. The parties started negotiations before the August 31, 2002 expiration date of the agreement and reached tentative agreements on wages and contributions to the pension and welfare funds. Thereafter, they met, albeit on too few occasions, which resulted more because of the Union's unavailability than Springer's, but sufficiently to discuss the issue that was of prime importance to him, the contracting-out provision. I find that there was a sufficient history of bargaining and sufficient time for an agreement to be made.

The major issue in the negotiations concerned Springer's insistence that he be able to contract out Leventhal's work to Park. That issue was certainly critical. The Union wanted to preserve the employment possibilities for the employees who remained at Libro, a complement which had been reduced by about half over the previous two years. A reason for that reduction was that Libro's work was being produced by Park, and the Union wanted to put a stop to it. On the other hand, Springer contended frequently that he could not do without Park and was arguing, with as much vehemence as the Union, that he was willing to protect the jobs of the employees, but only to a certain extent. By December 13, the parties knew exactly where the others stood; according to Springer's November 11 letter, "[a]ll economic issues have been agreed to, subject to a total agreement"; and neither he nor the Union had made any significant concession on this point of contention for several months.

The Union, however, on that date had still not arrived at a firm position, was still discussing it, and was urging Springer to increase his guaranty. As the Board wrote in *Royal Motor Sales*, 329 NLRB 760, 762 (1999), quoting from in *Hi-Way Billboards*, 206 NLRB 22, 23 (1973), enforcement denied 500 F.2d 181 (5th Cir. 1974):

> A genuine impasse in negotiations is synonymous with a deadlock: the parties have discussed a subject or subjects in good faith, and, despite their best efforts to achieve agreement with respect to such, neither party is willing to move from its respective position.

There is no way to predict whether the continuation of that discussion on December 13 might not have made progress, such as a modification of the Union's counterproposal, had Springer not refused to telephone the "powers that be" or to reconsider his proposal on the guarantee and, instead, abruptly reduced his wage offer and proposed, for the first time, that the employees pay for their health insurance. That regression from a tentative agreement made in August stopped negotiations cold.

It is true that "regressive bargaining is not per se unlawful," *Telescope Casual Furniture, Inc.*, 326 NLRB 588, 589 (1998); but it "is unlawful if it is for the purpose of frustrating the possibility of agreement." Here, Springer never testified about his reason for making his proposal. (He certainly never explained that Leventhal and Libro were losing money and were in financial distress.) Perhaps he strategized that, by regressing from the proposals he had made before, the Union would rethink its adamant opposition to his contracting-out proposal. But his lack of an explanation leads to the conclusion that he had nothing more in mind than to thwart an agreement, and that is illegal under Section 8(a)(5) and (1) of the Act. As held in *American Seating Co. v. NLRB*, 424 F.2d 106, 108 (5th Cir., 1970):

> It is well established that withdrawal by the employer of contract proposals, tentatively agreed to by both the employer and the union in earlier bargaining sessions, without good cause, is evidence of a lack of good faith bargaining by the employer in violation of §8(a)(5) of the Act, regardless of whether the proposals constituted valid offers subject to acceptance under traditional contract law.

Furthermore, that unfair labor practice prevented the parties from reaching a good-faith impasse. *Intermountain Rural Electric Assn. v. NLRB*, 984 F.2d 1562, 1569–1570 (10th Cir. 1993); *J. D. Lunsford Plumbing*, 254 NLRB 1360, 1366 (1981), enfd. mem. sub nom. *Sheet Metal Workers Local 9 v. NLRB*, 684 F.2d 1033 (D.C. Cir. 1982). I conclude, therefore, that no good-faith impasse existed. *United Contractors, Inc.*, 244 NLRB at 73.

Thus, even if Springer had put into effect in his December 23, 2002 letter his last proposal, whatever that might be, that still would have violated Section 8(a)(5) and (1) of the Act. As the Board stated in *Bottom Line Enterprises*, 302 NLRB 373 (1991), enfd. mem. sub nom. *Master Window Cleaning, Inc. v. NLRB*, 15 F.3d 1087 (9th Cir. 1994):

> [W]hen, as here, parties are engaged in negotiations for a collective-bargaining agreement, an employer's obligation to refrain from unilateral changes extends beyond the mere duty to provide notice and an opportunity to bargain about a particular subject matter; rather it encompasses a duty to refrain from implementation at all, absent overall impasse on bargaining for the agreement as a whole.

The very act of closure also violated Section 8(a)(5) because Leventhal merely moved its work from Libro to Park. In that instance, the Board applies the following test for determining whether Springer's decision is a mandatory subject of bargaining, *Dubuque Packing Co.*, 303 NLRB 386, 391 (1991), enfd. 1 F.3d 24 (D.C. Cir. 1993):

> Initially, the burden is on the General Counsel to establish that the employer's decision involved a relocation of unit work unaccompanied by a basic change in the nature of the employer's operation. If the General Counsel successfully carries his burden in this regard, he will have established prima facie that the employer's relocation decision is a mandatory subject of bargaining. At this juncture, the employer may produce evidence rebutting the prima facie case by establishing that the work performed at the new location varies significantly from the work performed at the former plant, establishing that the work performed at the former plant is to be discontinued entirely and not moved to the new location, or establishing that the employer's decision involves a change in the scope and direction of the enterprise. Alternatively, the employer may proffer a defense to show by a preponderance of the evidence: (1) that labor costs (direct and/or indirect) were not a factor in the decision or (2) that even if labor costs were a factor in the decision, the union could not have offered labor cost concessions that could have changed the employer's decision to relocate.

The General Counsel proved that Springer merely shifted the work of manufacturing shirts that had been performed for years by Libro to Park. There was no change, basic or otherwise, in the nature of Leventhal's operation. Leventhal, in particular, produced no evidence that the work changed significantly, that the work performed at Libro was discontinued and not transferred to Park, or that Leventhal changed the scope and direction of its enterprise. Finally, Leventhal did not offer any credible proof (I have rejected Springer's testimony about his alleged loss—in fact, Springer never made clear what entity lost money) that labor costs were not a factor or, if they were, that the Union could not have offered labor cost concessions that could have changed Springer's mind.

As a result, I conclude that Springer's decision to close Libro and switch all of Leventhal's work to Park is a mandatory subject of bargaining and that Leventhal and Libro violated Section 8(a)(5) and (1) of the Act by not offering to bargain. Springer never gave any notice about what he was going to do, with the exception of the WARN notice. That notice unambiguously made clear that the decision had been made, and it was a fait accompli. Compare *AT&T Corp.*, 337 NLRB No. 105, slip. op. at 4 fn. 9 (2002). There was nothing, in truth, to bargain about. "[T]he Union was not required to request bargaining in order to preserve its rights under the Act." *Dow Jones & Co.*, 318 NLRB 574, 577 (1996), enfd. mem. 100 F.3d 950 (4th Cir. 1996). Nor could there have been a waiver by the Union, which will not be found in

the absence of clear notice of an intended change. *Sykel Enterprises*, 324 NLRB 1123 (1997). Here, the change was not *intended*, but *effectuated*.

Springer did not give the Union notice that it could bargain about the decision at all. Although Union attorney Kennedy requested bargaining on February 27, 2003, that resulted in no substantive bargaining. In fact, the meeting opened with Springer telling Bock: "[W]e're going to be closing . . . as of the WARN notice." I concur with the Counsel for the General Counsel's comment in his brief that "Springer's offer made at this meeting to sell the business to the Union hardly qualifies as serious bargaining." But Springer also testified that he told Bock:

> I will give you an offer to pay the people some severance money. So we at least walk away and our people aren't going to suffer too much. And also we would go ahead and do anything necessary that they get job training or whatever was necessary forms we had to fill out.

However, he made no offer of severance pay "[i]n dollars." But Respondents contend that he did so, and thus attempted to bargain about the effects of the closing, relying on negotiations promoted by the Regional Director of Region 6. It seems obvious, however, that the Regional Director's attempt to foster a settlement involved the settlement of this proceeding, in particular, which might include a settlement of all the other disputes between the parties, including the arbitration award. Thus, discussion of the effects of the closure were merely ancillary to the main topic of the unfair labor practice proceeding and do not constitute bargaining over the effects of the closing sufficient to satisfy Libro's obligations under Section 8(a)(5) and (1) of the Act.

There remain several other allegations of unfair labor practices in the complaint. One is the alleged termination of Union President Shutt. The scheduled 2002 Christmas vacation was supposed to end on January 6, 2003, but Shutt had prearranged, with the approval of Cynthia Geist, Libro's plant manager, to delay her return to work, because she had an appointment with Social Security that day. The same day, Springer called Geist to ask what Shutt would be scheduled to work on, and Geist told him that she was going to trim necklines and strings off of the fronts of some of the shirts and eyelets. Springer asked if someone else could do that, and Geist replied that she had two other employees whose jobs encompassed trimming, and they could do that, but they were not coming in that day. Springer told Geist to have the trimmers do Shutt's trimming work.

Shutt also functioned as the quality control person, a position that had few responsibilities, but more importantly, as overseer; and Geist asked him who would fill Shutt's position of overseer on the cutting floor. Springer responded by saying that he was eliminating the overseer position and did not want Shutt to come to work. Geist then instructed Zerby, who had previously told Shutt to report to work because there was work for her, to call Shutt to tell her not to come to work and that her job as overseer had been eliminated. Geist told Shutt that her job as overseer was abolished and that her other duties were being given to other employees. Geist told Zerby that Springer had done away with Shutt's job and that he did not want her in the plant. Springer had never previously specified by name any employee to be told not to report for work. Both Geist and Zerby seemed to be flabbergasted by Springer's decision.

Springer's sole defense was that Shutt was not fired, and he never told anyone to fire her. That appears to be accurate. However, by eliminating Shutt's job, that is as good as firing. The purpose is served; Shutt no longer is employed. I find that the General Counsel has presented a prima facie case. Shutt was the Union president and a known Union supporter. In fact, she was the first one who signed the grievance against Leventhal and Libro protesting the

subcontracting with Park. Shortly after she served that grievance, Springer telephoned her and angrily asked: "[W]hat's a smart woman like you doing a stupid thing by signing your name to a grievance against me?" She was the only employee who testified against him at the arbitration. There is sufficient here, animus and knowledge, to conclude that the General Counsel has made a prima facie case of Section 8(a)(3) discrimination (even though there was a substantial lapse of time between the filing of the grievance and the termination and a lesser hiatus between her testimony and her discharge) under *Wright Line*, 251 NLRB 1083. Board law holds that, even if Springer discharged Shutt for reasons that violate the Act, if Springer showed that he would have taken the same action even in the absence of her union activities, Leventhal and Libro would escape liability. *Naomi Knitting Plant*, 328 NLRB at 1281 (1999); *Manno Electric*, 321 NLRB at 280 fn. 12. Springer, however, gave no explanation at all. In that circumstance, I conclude that Leventhal and Libro violated Section 8(a)(3) and (1) of the Act.

Finally, there are two other statements made by Springer—threats to close Libro—which the complaint alleges violated Section 8(a)(1) of the Act. The first was on October 14, 2002, when Springer called the employee members of the negotiating committee into his office; and the second was on November 15, the day after the arbitration. I have found that, before the employees commenced their strike on January 7, 2003, Springer had no intention of closing Libro. All these earlier threats were his attempt to scare the employees into submitting to his bargaining demands to permit him to send work to Park. As such, they were coercive and threatening, false, and not protected by the Act. I find them in violation of Section 8(a)(1). I note that, contrary to the assertion made in Respondents' brief, Springer did not deny making any of the statements attributed to him.

Remedy

Having found that Leventhal and Libro have engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. The complaint alleges, however, they, as well as Park, constitute a single employer, an allegation which Park denies. Interestingly, it took a contrary position in the arbitration proceeding. The award states:

> The Employer [Libro] points out that Rajan Shamdisani, its owner, also owns Park. Both plants are part of the same enterprise. Shirts were shipped back and forth between them and, until the Union objected, union labels were used in Park. If the corporate veil is pierced, we have here only one company.

Separate firms may be regarded as a single employer under the Act where there is interrelation of operations, together with centralized control of labor relations, common management, and common ownership or financial control. *Radio Technicians Local 1264 v. Broadcast Service of Mobile*, 380 U.S. 255 (1965); *NLRB v. M. P. Building Corp.*, 411 F.2d 567 (5th Cir. 1969). The Board does not require the presence of each factor to conclude that single employer status is warranted. *Dow Chemical Co.*, 326 NLRB 288 (1998). Rather, single employer status depends on all the circumstances and is characterized by the absence of the arms-length relationship found between unintegrated entities. *Operating Engineers Local 627 v. NLRB*, 518 F.2d 1040, 1046 (D.C. Cir. 1975), affd. in pertinent part sub nom. *South Prairie Construction Co. v. Operating Engineers Local 627*, 425 U.S. 800 (1976). *Dow Chemical Co.*, above; *Denart Coal Co.*, 315 NLRB 850, 851 (1994), enfd. sub nom. *Vance v. NLRB*, 71 F.3d 486 (4th Cir. 1995).

When Libro was still operating, it made about 75-80 percent of Leventhal's shirts. It also made the markers for the shirts that Park produced for Leventhal, the remaining 20-25 percent

of Leventhal's shirts. Libro sent the patterns and markers to Park, which manufactured the shirts and returned them to Libro for shipping to customers. Geist spoke with "people" at Park almost daily, "because they would have questions from time-to-time about different styles or you know we worked, we worked together for a long time. When there was a lot of work, we worked together." Park, the nonunion company, put Union labels on the shirts that it made. Some of the shirts that came back from Park needed to be repaired, so Libro's stitching department would do that work.

Typically, Park made Leventhal's "lo-end" shirts; its more intricate shirts were made at Libro. As noted above, there appears from this record to be no invoices for any of the work produced by either Park or Libro, and Springer's attempt to show an arm's length negotiation for the price of what was being produced by Park failed utterly. After the strike began on January 7, 2003, Libro and Leventhal shipped both their unfinished and finished goods to Park for manufacture and shipping. So close was the relationship that Libro and Park (to whom Springer referred to as "we" and "us") were covered under the same casualty and property insurance policy. *Emsing's Supermarket, Inc.*, 284 NLRB 302, 304 (1987), enfd. 872 F.2d 1279 (7th Cir. 1989). They, as well as Leventhal, were serviced by the same accountant, *Denart Coal Co.*, 315 NLRB at 852 fn. 12; and they were all represented in this proceeding by the same attorneys. It is true that Park performed work for customers other than Leventhal, and Libro did not, and that there was no interchange of employees; but for the purposes of Leventhal's product, Park and Libro were performing the same or similar work.

Regarding centralized control of labor relations, although Springer testified that Bates handled labor relations for Park, Springer averred in a pre-complaint investigatory affidavit that he handled labor relations for both Libro and Park. I credit that affidavit, given at a time when Springer undoubtedly did not realize the import of his words. I note also Respondents' repeated reliance on an attempt by the International UNITE to organize Park's employees. Springer, while rejecting that effort, never insisted that he did not have the power to make such an agreement. Indeed, if the International procured more business for Park, Springer promised to consider agreeing that Park would remain neutral if the International sought to organize Park's employees.

Regarding common management, although the directors of Leventhal and Libro, who are the same, are not the directors of Park, Springer is the chief operating officer of all three companies, as well as consultant to both Libro and Park. It was he who made the decision to purchase Park in 2000. It was he who instructed Park during the strike to pick up Libro's goods. None of Park's directors testified, not did anyone on behalf of any of Respondents, except for Springer. Thus, despite the difference of directors, there is no testimony about whether the directors of any of the corporations actually did anything or made any decisions.

Regarding common ownership, all three companies are closely held corporations. Libro and Leventhal are owned in equal shares by Rajan Shamdisani, Deepak Shamdisani and Kalpana Shamdisani, who each also own 15 percent of Park, which they and the other owners purchased on October 16, 2000. The remaining shares of Park are owned by Bates (25 percent), the general manager, and accountant Norman (30 percent), who as noted above is the accountant not only for Park but also for Leventhal and Libro, and who, I strongly suspect, is their nominee.

There is enough evidence here to support the conclusion that Park and Leventhal and Libro constitute a single integrated enterprise and single employer within the meaning of the Act. As such, all three entities are liable for remedying the unfair labor practices alleged in the complaint. *Denart Coal Co.*, above.

Having discriminatorily discharged Shutt, Respondents must offer her reinstatement and make her whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Because Respondents have discriminatorily relocated Libro's work to Park, I will require Respondents to restore the Libro operation. *Associated Constructors*, 325 NLRB 998, 1000 (1998), enfd. sub nom *O'Dovero v. NLRB*, 193 F.3d 532 (D.C. Cir. 1999); *Lear Siegler, Inc.*, 295 NLRB 857, 861 (1989). Respondents have not demonstrated, indeed have not offered any proof, that restoration of the status quo ante would be unduly burdensome. The marker machine, if truly broken, ought to be able to be repaired without great difficulty. Certainly, Respondents have not adduced evidence to the contrary. In addition, Libro still owns its premises, and all the equipment is still there. This restoration remedy includes the reinstatement of all former employees of Libro who were laid off, as well as making them whole for any loss of earnings and other benefits from the time Respondents refused to reinstate them after March 14, 2003, the date of their unconditional offer to return to work, computed and with interest, as set forth above, . Upon request of the Union, Respondents shall rescind the changes to their employees' terms and conditions of employment that were implemented on or about January 6, 2003, restoring the status quo ante, and make whole their employees for any losses they sustained as a result of the implementation of those changes, as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), plus interest as computed above.

Because Libro has been closed, I shall order that the appropriate notice to employees be not only posted in Respondents' facilities but also mailed to all of Libro's employees. The Union requests that the notice also be published in a local Lykens, Pennsylvania newspaper. The record does not support that relief.

On these findings of fact and conclusions of law and on the entire record, including my observation of the witnesses as they testified and my consideration of the briefs filed by all parties, I issue the following recommended[2]

ORDER

Respondents Libro Shift Mfg. Co., Park Shirt Company, Inc., and Leventhal, Ltd., their officers, agents, successors and assigns, shall:

1. Cease and desist from

(a) Threatening their employees with closure of the Libro Shirt Mfg. Co. ("Libro") facility if they refuse to agree to Respondents' proposals for a collective-bargaining agreement.

(b) Threatening their employees with closure of the Libro facility if they process grievances to arbitration.

(c) Threatening to bypass the Unite Mid-Atlantic Regional Joint Board ("Union") and bargain directly with their employees for a collective bargaining agreement.

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(d) Discharging their employees because they engaged in union activity or other protected concerted activity.

(e) Closing the Libro facility and diverting or transferring bargaining-unit work from the Libro facility to the Park Shirt Company, Inc. Jamestown, Tennessee, facility ("Park") in retaliation for their employees' union activity and other protected and concerted activity.

(f) Closing the Libro facility and diverting or transferring work previously performed by their employees in the following unit without prior notice to the Union and without affording it an opportunity to bargain concerning that decision:

> All the employees working at Libro Shirt Mfg. Co., Lykens, Pennsylvania; excluding all executive, administrative, supervisory, clerical, maintenance and janitorial employees and guards.

(g) Refusing to bargain with the Union as the collective-bargaining representative of their employees in the unit set forth above by making unilateral changes in wages and other terms and conditions of employment without first notifying the Union of the proposed changes and affording it an opportunity to bargain concerning those changes.

(h) Telling the Union that the parties are at impasse in negotiations and falsely announcing that new terms and conditions of employment are being implemented.

(i) Making regressive contract proposals with respect to wages and other terms and conditions of employment to avoid reaching agreement with the Union and in response to the Union's request to bargain over other terms and conditions of employment.

(j) In any other manner interfering with, restraining, or coercing their employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative actions necessary to effectuate the policies of the Act:

(a) Immediately reestablish and resume production operations at the Libro facility in a manner consistent with the manner and level of operations that existed before production ceased at that facility on January 7, 2003; offer reinstatement to all employees who were on active employment status as of that date; and make those employees whole for the losses they sustained as a result of the closing of the Libro facility.

(b) On request, bargain with the Union as the exclusive collective-bargaining representative of their employees in the bargaining unit set forth above concerning terms and conditions of employment.

(c) Upon request of the Union, rescind the changes to their employees' terms and conditions of employment that were implemented on or about January 6, 2003, restore the status quo ante, and make whole their employees for any losses they sustained as a result of the implementation of those changes.

(d) Within 14 days of the date of this Order, offer Faye Shutt full reinstatement to the position she held before she was discharged, or, if that position no longer exists, to a substantially equivalent position without prejudice to her seniority or any other rights or privileges she previously enjoyed.

(e) Make Faye Shutt whole for any loss of earnings and other benefits she suffered as a result of her unlawful discharge, plus interest, in the manner set forth in the Remedy section of this Decision.

(f) Within 14 days of the date of this Order, remove from its files any reference to the unlawful discharge of Faye Shutt, and within 3 days thereafter, notify Faye Shutt in writing that this has been done and that her discharge will not be used against her in any way.

(g) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payments records, timecards, personnel records and reports, and other records, including an electronic copy of the records if stored in electronic form, necessary to analyze the back pay due under the terms of this Order.

(h) Within 14 days after service by Region 6, post at their facilities in Manhasset, New York; Lykens, Pennsylvania; and Jamestown, Tennessee, copies of the attached notice marked "Appendix".[3] Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by Respondents' authorized representatives, shall be posted by Respondents immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(i) Within 14 days after service by the Region, mail a copy of the attached notice marked "Appendix"[4] to all employees in the unit set forth above, whether on active employment status or on layoff status, who were employed by Respondents at the Libro facility at any time from the onset of the unfair labor practices found in this case until the completion of these employees' work at that jobsite. The notice shall be mailed to the last known address of each of the employees after being signed by Respondents' authorized representatives.

(j) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondents have taken to comply.

Dated, Washington, D.C. September 12, 2003

_____
Benjamin Schlesinger
Administrative Law Judge

[3] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[4] See footnote 3.

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT threaten our employees with closure of the Libro Shirt Mfg. Co. ("Libro") facility if they refuse to agree to our proposals for a collective-bargaining agreement.

WE WILL NOT threaten our employees with closure of the Libro facility if they process grievances to arbitration.

WE WILL NOT threaten to bypass the Unite Mid-Atlantic Regional Joint Board ("Union") and bargain directly with our employees for a collective bargaining agreement.

WE WILL NOT discharge our employees because they engaged in union activity or other protected concerted activity.

WE WILL NOT close the Libro facility and divert or transfer bargaining-unit work from the Libro facility to the Park Shirt Company, Inc. Jamestown, Tennessee, facility ("Park") in retaliation for our employees' union activity and other protected and concerted activity.

WE WILL NOT close the Libro facility and divert or transfer work previously performed by our employees in the following unit without prior notice to the Union and without affording it an opportunity to bargain concerning that decision:

All the employees working at Libro Shirt Mfg. Co., Lykens, Pennsylvania; excluding all executive, administrative, supervisory, clerical, maintenance and janitorial employees and guards.

WE WILL NOT refuse to bargain with the Union as the collective-bargaining representative of our employees in the unit set forth above by making unilateral changes in wages and other terms and conditions of employment without first notifying the Union of the proposed changes and affording it an opportunity to bargain concerning those changes.

WE WILL NOT tell the Union that the parties are at impasse in negotiations and falsely announce that new terms and conditions of employment are being implemented.

WE WILL NOT make regressive contract proposals with respect to wages and other terms and conditions of employment to avoid reaching agreement with the Union and in response to the Union's request to bargain over other terms and conditions of employment.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL immediately reestablish and resume production operations at the Libro facility in a manner consistent with the manner and level of operations that existed before production ceased at that facility on January 7, 2003; offer reinstatement to all employees who were on active employment status as of that date; and make those employees whole for the losses they sustained as a result of the closing of the Libro facility.

WE WILL on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the bargaining unit set forth above concerning terms and conditions of employment.

WE WILL upon request of the Union, rescind the changes to our employees' terms and conditions of employment that were implemented on or about January 6, 2003, restore the status quo ante, and make whole our employees for any losses they sustained as a result of the implementation of those changes.

WE WILL within 14 days of the date of the Board's Order, offer Faye Shutt full reinstatement to the position she held before she was discharged, or, if that position no longer exists, to a substantially equivalent position without prejudice to her seniority or any other rights or privileges she previously enjoyed.

WE WILL make Faye Shutt whole for any loss of earnings and other benefits she suffered as a result of her unlawful discharge, plus interest.

WE WILL within 14 days of the date of the Board's Order, remove from its files any reference to the unlawful discharge of Faye Shutt, and within 3 days thereafter, notify Faye Shutt in writing that this has been done and that her discharge will not be used against her in any way.

LIBRO SHIRT MFG. CO.

(Employer)

Dated _____ By _____

(Representative) (Title)

PARK SHIRT COMPANY, INC.

(Employer)

Dated _____ By _____

(Representative) (Title)

LEVENTHAL LTD.

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

1000 Liberty Avenue, Federal Building, Room 1501, Pittsburgh, PA 15222-4173

(412) 395-4400, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (412) 395-6899.